

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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SPHERE 3D CORP.,	:	Case No. 1:23-cv-02954
	:	
<i>Plaintiff and Counter-Defendant,</i>	:	The Hon. Judge P. Kevin Castel
	:	
v.	:	Magistrate Judge Valerie Figueredo
	:	
GRYPHON DIGITAL MINING, INC.,	:	
	:	
<i>Defendant and Counter-Plaintiff,</i>	:	<b><u>NOTICE OF PARTIAL</u></b>
	:	<b><u>MOTION TO DISMISS</u></b>
	:	
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**PLEASE TAKE NOTICE** that, upon the accompanying Memorandum of Law in Support of Defendant-Counterclaim Plaintiff’s Motion to Dismiss the Amended Complaint, and all other papers and proceedings herein, Defendant-Counterclaim Plaintiff Gryphon Digital Mining, Inc. (“Gryphon”) will move this Court, before the Honorable P. Kevin Castel, United States District Court Judge for the Southern District of New York, located at 500 Pearl Street, New York, New York 10007, on a date and time to be set by the Court, for an Order: (1) dismissing Counts II and III of Plaintiff-Counterclaim Defendant Sphere 3D Corp.’s Amended Complaint, with prejudice, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure; (2) dismissing any claim purportedly based on the allegation that, among other things, Gryphon “has been skimming off the top” or “stealing” the assets or money of Sphere, with prejudice, pursuant to Rule 9(b) of the Federal Rules of Civil Procedure or, alternatively, striking such allegations pursuant to Rule 12(f) of the Federal Rules of Civil Procedure; (3) awarding Gryphon its reasonable attorneys’ fees associated with this motion and the pre-letter motion briefing that preceded it, pursuant to the prevailing party provision of the MSA (Am. Compl., Ex. 1, p. 3); and (4) granting Gryphon such other and further relief as the Court deems just and proper.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to this Court's Order and Briefing Schedule, dated August 11, 2023 (ECF No. 23), Plaintiff-Counterclaim Defendant Sphere 3D Corp.'s response in opposition is due by September 8, 2023, and Gryphon's reply brief is due by September 18, 2023.

Dated: August 18, 2023

**K&L GATES LLP**

By: /s/ Brian D. Koosed

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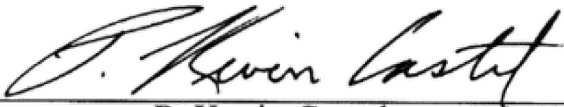
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Motion (ECF 24) denied without prejudice to renewal against the Second Amended Complaint on the schedule set forth in the Order of October 27, 2023.

SO ORDERED.

Dated: 10/29/2023

  
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P. Kevin Castel  
United States District Judge